IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24/03/2003

Coram

The Honourable Mr. Justice V.S. SIRPURKAR
and
The Honourable Mr. Justice V. KANAGARAJ

H.C.P. No.2085 OF 2002

Rathinavel Naicker ..... Petitioner

-Vs-

1. The State of Tamil Nadu
rep. by its Secretary to Government
Prohibition and Excise Department
Chennai 9

2. The District Magistrate and
District Collector
Villupuram District
Villupuram :: Respondents

Petition under Art.226 of the Constitution of India
praying for a Writ of Habeas Corpus as stated
in the petition

For Petitioner :: Mr.P.Venkatasubramanian

For Respondents :: Mr. A. Navaneethakrishnan
Addl. Public Prosecutor
:ORDER

(Order of the Court was made by V.S. SIRPURKAR, J.)

The order in challenge is dated 9-9-2002, passed by the District Magistrate and District Collector, Villupuram, dubbing one Ramesh alias Ponazhagan as bootlegger and directing his detention on the ground of prejudice to the public order under subsection (1) of Section 3 of the Tamil Nadu Act 14 of 1982.

2. From the grounds it appears that on 11-8-2002, Inspector of Police, Ginjee apprehended one lorry bearing Registration No.TN-32-K-749 2 and on checking the same, found that there were 207 white plastic cans, each containing 35 litres totalling 7245 litres of rectified spirit and 45 boxes comprising two cans in each box numbering 90 cans, each containing 35 litres, totalling 3150 litres of rectified spirit. Thus, there was a total of 10395

litres of rectified spirit.

3. It is then contended that the accused Ramesh, detenu herein, and the co-accused Manoharan, who was driver of the lorry at the relevant time, did not have valid permit from the Government for the transportation of the rectified spirit. A reference is then made that the detenu Ramesh gave a voluntary confession statement in presence of the two other witnesses. There is nothing in the order to suggest as to what that confession statement was. Then it is pointed out that samples were collected from the cans and the cans with rectified spirit were also seized. Both the accused persons were brought to Gingee police station and a crime was registered against them vide C.C. No.60 1 of 2002 under Secs.4(1-A), 4(1)(aaa) of Tamil Nadu Prohibition Act 1937 read with Secs.5, 6 and 11 of Tamil Nadu Rectified Spirit Rules 1959. It is then contended that both the accused persons escaped from the police station on 12-8-2002 at 5.45 hrs. and a complaint regarding that was also launched vide Crime No.602 of 2002 for offences under Sec.224 I.P.C. Grounds then suggest that the accused Ramesh was arrested on 17-8-2002 at 14.00 Hrs. at Perunkalathur junction road. The co-accused Manoharan was arrested on 16-8-2002 at Thiruvannamalai Theradi and he gave a second confession statement in presence of two witnesses. The detenu Ramesh also gave a second confession statement in presence of the two witnesses, which was recorded. It is significant to note that none of the confession statements have been described by the detaining authority. It is then pointed out that they were produced before the Judicial Magistrate, Vellore on 16-8-2002 and were remanded till 29-8-2002 and subsequently the remand was extended up to 12-9-2002. It is then pointed out that on a requisition given by the Inspector of Police, 297 sample bottles were sent to the Assistant Director, Regional Forensic Laboratory, Villupuram for chemical analysis and in the report dated 5-9-2002, the Assistant Director had informed that the samples contained Ethyl Alcohol, Acids, Easters and Aldehydes and that it is a first quality rectified spirit. The results were only of five bottles which were chosen in random. The detention order, however, makes a reference to the opinion of one Dr. Vetrivel, MBBS, suggesting that if a person consumes the rectified spirit of □insufficient dilution□, he may develop giddiness, vomitting, desentry and intestine, liver, kidney might be affected and if not treated vigourously could also cause the death.

4. On the basis of this material, the detaining authority came to the conclusion that the detenu Ramesh was a bootlegger, transporting huge quantity of rectified spirit in contravention of law and thereby acted in a manner prejudicial to the maintenance of public health and public order. In paragraph 5 of the grounds of detention, the detaining authority records that the detenu, who was transferred to Central Prison, Cuddalore, was likely to move the bail application and thereby was likely to come out on bail after some lapse of time. If he comes out on bail, he might indulge in such further activities in future, which would be prejudicial to the maintenance of public health.

5. Learned counsel, while challenging the detention, urges two points:
5.1. Firstly, he says that there was not even a single adverse case

against the petitioner and the whole detention depended upon a single incident whereby the petitioner was apprehended probably because he was accompanying the co-accused Manoharan in the said lorry. Learned counsel points out that the petitioner is a mere conductor of the lorry and had nothing to do with the ownership or otherwise of the rectified spirit and there was nothing in the whole record to suggest that he was a part of the scheme to either sell this rectified spirit in the State of Tamil Nadu or to use it. He points out that in order to justify a detention under Sec.3 of the said Act, the essential condition was that there has to be an apprehension of prejudice to the public order. Learned counsel urges that this singular incident, wherein the petitioner was arrested as a mere conductor, could not have been said to be the incident of such potential so as to disturb the public order in any manner. He points out, therefore, that there was no material to support the inference drawn by the detaining authority that there was likelihood of a prejudice to the public order.

5.2. By way of second contention, learned counsel points out that in fact the petitioner had filed a bail application as back as on 27-8-2002 of which, notice was given to the Public Prosecutor on 29-8-2002 , in which the petitioner had shown his innocence in the matter. He points out that this bail application was firstly adjourned to 3-9 -2002 and later on to 5-9-2002. However, this is not put by the sponsoring authority before the detaining authority as there is no reference to the same in the affidavit of the sponsoring authority nor has this bail application been either relied upon by the detaining authority or supplied to the detenu also along with the other papers.

6. As against this, learned Additional Public Prosecutor points out that from the definition of the term bootlegger, it was clear that the detenu was transporting large quantity of rectified spirit and that there was opinion available to suggest that the drinking of undiluted rectified spirit by the human beings was likely to be hazardous and dangerous to the health and, therefore, if the detenu was engaged in transporting such a huge quantity of rectified spirit, he could be easily branded as bootlegger and once he is branded as bootlegger, he could be detained. Learned Additional Public Prosecutor suggested that the large quantity itself was suggestive that if distributed it would have caused grave danger to the public health and this resulted in prejudice to the public order.

7. As regards the second argument, the learned Additional Public Prosecutor says that it is nowhere stated in the detention order that bail application was not made. What was expressed was an expectation by the detaining authority that in case the bail application is made that was likely to be allowed and thereby, the detenu would have been released and could have again repeated his nefarious activities.

8. On this rival contention, it has to be seen as to whether in this case, there was really any matter before the concerned authority to come to the conclusion that the activity of the petitioner was likely to cause prejudice to the public order.

9. It is significant to note that in his confession statements, there is nothing suggesting that the detenu in any manner owned or had any connection with the ownership of the material, i.e. rectified spirit. It is true that it was stated in the confession statement of the co-accused Manoharan that he had contacted one Kumar because he was jobless and that Kumar had given him this assignment of driving the vehicle which vehicle he was to deliver to some other persons after entering Tamil Nadu. Beyond that there is nothing in the confession statement suggesting that the detenu in any manner was aware of

(a) the nature of the rectified spirit;

(b) the subsequent plan as to how and what was to be done with that rectified spirit; and

(c) the owners of that rectified spirit.

It is obvious that the detenu has merely accompanied the co-accued Manoharan in the said lorry, who was given a specified duty of driving the lorry. It is also not anybody□s case and it is not in the confession statement that the detenu even owned the said lorry. It is significant to note that the role of the detenu was that of the conductor of the lorry which had the illicit rectified spirit. There is again nothing in the confession statement to suggest that he knew about the nature of the rectified spirit, whether it was a diluted or undiluted spirit; whether it was potable spirit or unpotable spirit. The basic reason why the detaining authority has come to the conclusion regarding the disturbance of the public order is on account of the potential of this rectified spirit being used for the drinking purposes and thereby affecting the public health. There was no question of the detenu knowing about even the nature of this rectified spirit □ whether it was diluted or undiluted spirit. In this behalf, when we see the report of the chemical analyst, there is nothing to suggest that this rectified spirit was poisonous in any manner. The report of the Chemical Analyst, which is on record, does not suggest that it was not potable spirit. The report and the opinion of the Doctor is also guarded. It suggests that if □undiluted□, the drinking of the rectified spirit would be dangerous to the human life. Now there was nothing for the detenu to know as to whether this rectified spirit was diluted or undiluted. There is no material on record to suggest that this was a concentrated rectified spirit, the drinking of which would have affected the human health. In short, there was nothing on record to suggest that the detenu in manner knew about the hazardous or abnoxious nature of the rectified spirit or that he in any manner knew as to what use this rectified spirit was going to be put to and whether it was going to be used only for the purpose of drinking. If this is so, then, clearly there would be no material available to suggest that as the act of transporting was so potent and so dangerous as would have caused disturbance to the public order. We have scanned all the documents on record and we do not find anything to indicate this detenu accepting that he was accompanied the co-accused Manoharan in the lorry probably with or without the knowledge that there was rectified spirit in the lorry. We do not think that this □singular incident□ by itself was never to cause disturbance in the public order. We cannot forget that there is absolutely no other material suggesting that the detenu was in any manner connected with the trade of rectified spirit. We do not mean to say that a □singular incident□ could not be a basis for a preventive detention. However, the incident must be of such ferocity or such nature as by itself would be

sufficient to cause the disturbance to the public order. In our opinion, this incident is not such an incident. Therefore, on this ground alone, the detention would have to be quashed.

10. There is nothing in the grounds to suggest that the detaining authority was aware of the nature of the rectified spirit, whether it was diluted or undiluted. The detaining authority is completely silent in the grounds of detention on that aspect also. Therefore, we have our own doubts as to whether this rectified spirit could have caused or had the potential to cause the disturbance to the public health if it were to be consumed by the general public. On this ground, the detention is clearly bad.

11. The Supreme Court has in different context taken a view in the judgment in DARBAN KUMAR SHARMA v. STATE OF TAMIL NADU (J.T. 2003 (1) SC 176) that if the detention is based on a singular incident, it must have the potential of disturbing the public order. In our opinion, the incident reported did not have such potential nor is it shown that the detaining authority had any material to suggest that this incident would have caused prejudice to the public order as we have pointed out above.

12. In that view, the detention order is quashed. The detenue is directed to be set at liberty forthwith unless he is required in connection with any other case. The Habeas Corpus Petition is allowed.

Index:Yes
Website:Yes

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To:
1. The State of Tamil Nadu
rep. by its Secretary to Government
Prohibition and Excise Department
Chennai 9

2. The District Magistrate and
District Collector
Villupuram District
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